



STATE REPRESENTATIVE

JESSE JAMES

Representative Jesse James' Testimony in Support of AB 384

September 21, 2021

Thank you Chairwoman Dittrich and other committee members for holding and hearing testimony regarding Assembly Bill 384 today. The issue of regulated aboveground storage tank sizes became an urgent issue when a DATCP department review discovered that the Department lacked specific statutory authority to regulate aboveground storage tanks between 110 and 5,000 gallons. The program existed in the Department of Commerce before its subsequent transfers to the Department of Safety and Professional Services (DSPS) and DATCP. The program has regulated storage tank systems, including aboveground storage tank systems, for decades. Due to the reorganizations, statutes have neglected to keep pace with the program. After communication with fire departments, local program operators, and stakeholders, the Department ceased regulation completely on October 1, 2019. This bill simply brings back into play statutory language which existed for over 40 years prior to October of 2019. There was an obvious misstep here, and the goal is to bring things back to the way they were.

Some say this isn't even a big problem; I would beg to differ. There are various potential issues that could come about without these regulations in place; for example, not meeting EPA or industry standards, the cost of damage and cleanup efforts if a spill occurs due to lack of inspection, and local program operators not contracting with DATCP due to lack of revenue, causing their usual responsibilities of tank system plan review and inspection to fall on local fire departments, who lack the resources to do them.

With these regulations in place, we wouldn't have had a recent spillage incident in Eau Claire County this past April. I have attached a copy of this incident for your review. This stuff happens, and we do have a duty to protect the environment and our communities from these types of preventable accidents.

Here is a brief synopsis of this incident:

Multiple diesel and fuel tanks were stated to be stored improperly, hidden in a semi trailer. The tanks are not up to regulations and constantly leak. A drip pan is noted to be at the location which is supposed to be emptied out which never is. A few years ago a 500 gallon tank was stated to have completely emptied which leaked out into the surrounding soil.

Environmental Impact:

The soil of the location has been affected. No sewer systems or local waterway were stated to have been breached but RP believes the groundwater may have been contaminated due to the constant leakage.

It is unknown how much was released and recovered. The clean-up process and start up is unknown. I am waiting to hear from the DNR in regards to this incident. Having this legislation in place would have potentially prevented this situation. The persons involved in this would have had to report what they have



STATE REPRESENTATIVE

JESSE JAMES

on their property, the quantity on site, and the storage of the product would have been subjected to inspection. These regulations just makes sense; this change just makes sense.

We have trained professionals here to explain this process more in depth so I am going to stop here and allow them to get up here and testify. Thank you!

SERTS ID:
20210423WC18-1

Reported:
04/23/2021 10:06

Occurred:
UNKNOWN

Substance:
DIESEL FUEL [DIESEL]
AMOUNT RELEASED AND
AMOUNT RECOVERED ARE
UNKNOWN AT THIS TIME

Reported by:
DISPATCH
HOTLINE#: CFS 000181-7671
DNR VIOLATION HOTLINE
(800) 847-9367

Location:
WC REGION
EAU CLAIRE COUNTY
EAU CLAIRE, CITY OF
BLUE NORTHERN DISTRIBUTING
5640 OLD TOWN HALL RD

Responsible Party:
ANDY PRITCHARD (BLUE NORTHERN DISTRIBUTING)
5640 OLD TOWN HALL RD
EAU CLAIRE, WI 54701

Cause:
OTHER CAUSE



STATE REPRESENTATIVE

JESSE JAMES

Cause Description:

Multiple diesel and fuel tanks were stated to be stored improperly, hidden in a semi trailer. The tanks are not up to regulations and constantly leak. A drip pan is noted to be at the location which is supposed to be emptied out which never is. A few years ago a 500 gallon tank was stated to have completely emptied which leaked out into the surrounding soil.

Environmental Impact:

The soil of the location has been affected. No sewer systems or local waterway were stated to have been breached but RP believes the groundwater may have been contaminated due to the constant leakage.

Comments:

CFS 000181-7671

RP reporting a continuous situation in Eau Claire CO/Eau Claire at the above address. It was noted that multiple gasoline and fuel tanks were stated to be hidden in a semi-trailer which are not up to regulations. The containers were indicated to be constantly leaking. A drip pan was noted to be under them that is supposed to be emptied by employees at blue northern distributing which never are. The floor to the semi was stated to be covered with fuel and diesel which drips into the ground at the location. A few years ago one of the 500 gallon diesel tanks leaked all over into the soil and RP believes the ground water may be contaminated at this time. The property was stated to be owned by Chaput produce which has a hands off policy with the renter blue northern distributing. The trailer with the hidden tanks was stated to be right next to the white house which is next to the road. If you go in the driveway, it will be the trailer which is the furthest north with blue stairs leading up to it. Andy Pritchard was indicated to be the owner of the organization. RP stated that the fuel tanks are also not grounded which is causing an explosion hazard. RP left contact information and stated willingness to also talk to the spills team.

Cliff 715-829-3695

CALLED WARDEN JACOB BOLKS 10:15:26

WARDEN JACOB BOLKS ACKNOWLEDGED THE CFS 10:15:15 CALLED WCR JAYSON SCHRANK 10:26 - ACKNOWLEDGED

Cleanup:

CLEAN-UP PROGRESS UNKNOWN OR CLEAN-UP NOT STARTED.

Notified WCR JAYSON SCHRANK at 10:26 by Phone



Testimony in Support of Assembly Bill 384

Assembly Committee on Consumer Protection

September 21, 2021

Chairman Dittrich, Vice-Chair Edming, and members of the committee, I appreciate this opportunity to testify in support of Assembly Bill 384.

As you know, Wisconsin regulates aboveground and underground petroleum and hazardous material storage systems in order to ensure that petroleum products and other volatile substances are stored safely. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has been the agency in charge of the aboveground storage system inspection program for nearly a decade, before which it existed in the Department of Commerce and the Department of Safety and Professional Services (DSPS). Unfortunately, through reorganizations and shifts between the agencies that oversee the program, our state statutes have failed to keep pace with its needs.

This issue gained urgency when the Department's 2017 Wisconsin Act 108 review discovered that the Department lacked specific statutory authority to fulfill its longstanding mission to regulate aboveground storage tanks between 110 and 5,000 gallons. As a result, on October 1, 2019, the Department ceased regulation of these tanks. DATCP proactively worked with legislators and the Legislative Reference Bureau to draft legislation to fix these problems before the deadline arrived, and while we were unable to pass it into law in time last session, we have an opportunity now to make these overdue and necessary statutory adjustments.

Assembly Bill 384, which we drafted in collaboration with DATCP, makes a number of changes in order to update our state statutes and bring them in line with current best practices and the needs of the program. Primarily, the bill revises and more accurately characterizes certain terms, restores DATCP authority to regulate tanks of the described capacities, resolves other issues of authority, and authorizes DATCP to contract with Local Program Operators (LPOs) to administer or implement aboveground storage tank requirements.

While the changes made by the bill are mainly technical, the impact will be significant. Over 18,000 aboveground storage tanks in our state are no longer inspected by DATCP, which leaves our state exposed to a myriad of potential threats to the environment, public safety, and the regulated community. It's also important to know that DATCP's historical data shows that tanks with fewer than 5,000 gallons have a higher non-compliance rate. Without this bill, our regulatory framework no longer meets industry, EPA, or our surrounding states' standards for aboveground storage tank regulation, and when spills occur, the damage and related cleanup efforts can be extremely costly. We've also heard from local fire departments about the hazard posed by unregistered and/or ill-placed or ill-managed tanks and the lack of opportunities to educate tank owners to ensure they are utilizing their storage tank systems safely.

Aboveground storage is not a Democratic or Republican issue; it's a public health and safety issue. This bill will support fire prevention, protect our natural resources and public health, and provide certainty for DATCP and the regulated community. Thank you for your consideration, and I welcome any questions you may have.

Testimony on 2021 Assembly Bill 384

Senator Robert Cowles
Assembly Committee on Consumer Protection
September 21st, 2021

Thank you, Chairwoman Dittrich and Committee Members, for holding a hearing and allowing me to submit testimony on 2021 Assembly Bill 384. This bill makes various changes to the hazardous liquid storage tank regulation and inspection program run by DATCP.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP), after various changes between state agencies, regulates storage tank systems in Wisconsin. The program has regulated storage tank systems, including aboveground storage tank systems, for decades. Due to the reorganizations, statutes have neglected to keep pace with the program, leaving uncertain authority to carry-out these programs.

The issue of regulated aboveground storage tank sizes gained an urgency when the Department's 2017 Wisconsin Act 108 review discovered that the Department lacked specific statutory authority to fulfill its longstanding mission to regulate aboveground storage tanks between 110 and 5,000 gallons. After consultation with stakeholders, DATCP ceased regulation on October 1, 2019. In anticipation, DATCP worked to draft legislation to fix these problems. This work is reflected in Assembly Bill 384, which will:

- Match statutory authority with the program that had been in operation for decades.
- More accurately characterizes certain terms relevant to this program in the law.
- Resolves issues of statutory, prosecutorial, and fees authority requested by the Legislature in Section 9138 (3) (fm) of 2013 Wisconsin Act 20, the 2013-15 State Budget.

Since October 2019, the state has exposed itself to various potential threats to the environment and the regulated community. This includes failing to meet federal standards and the standards in surrounding states, increased environmental pollution with massive costs, some of which may fall to the taxpayers, reductions in the capacity of local and private program operators to review tank system plans and inspect tanks, leaving those duties to overtaxed local fire departments, and more.

Assembly Bill 384 resolves these issues and others that have emerged by updating our statutes to reflect the longstanding program operations and ensure our law reflects the duties that have fallen to DATCP after reorganizations. I also believe this legislation reflects the intent of 2017 Wisconsin Act 108, which is to identify agency actions that do not reflect statutory authority, halt those actions, and let the Legislature decide whether those regulations are worthy of being reinstated. I believe this bill reflects regulations that are worthy of being reinstated, and I look forward to a conversation with stakeholders on how to make this happen.



MEMORANDUM

TO: Members of the Assembly Committee on Consumer Protection
FROM: Jordan Lamb, DeWitt LLP
DATE: September 21, 2021
RE: **Opposition to AB 384, Storage of Petroleum Products**

On behalf of the Wisconsin Potato and Vegetable Growers Association, the Wisconsin Pork Association, the Wisconsin State Cranberry Growers Association, the Wisconsin Cattlemen's Association, the Wisconsin Soybean Association and the Wisconsin Farm Bureau Federation, I provide the following comments in **opposition** to AB 384, storage of petroleum products.

Currently, aboveground farm fuel storage tanks under 5,000 gallons are exempted from regulation by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). This is, in part, due to an administrative ruling.

In July 2019, DATCP notified affected Local Program Operators that it would cease to regulate all flammable and combustible liquid aboveground storage tanks that are less than 5,000 gallons on October 1, 2019. This notification resulted from a statutory mandate in which DATCP identified that a portion of administrative rule ATCP 93 conflicted with state statute chapter 168, which regulates aboveground storage tanks. As a result, DATCP inspections of aboveground tanks less than 5,000 gallons for compliance with NFPA standards are currently suspended.

It is my understanding that this legislation aims to correct that administrative ruling. This bill would impose a regulatory threshold of 110 gallons for all fuel storage tanks. In other words, all tanks over 110 gallons would be subject to DATCP regulation under this bill.

However, there was a specific regulation for dispensing and storing fuel at farms prior to 2019. See Wis. Admin. Code s. ATCP 93.630. The regulation provided different requirements for FARM tanks based on size.

Registration Exemption for Farm Tanks Under 1,100 Gal. Prior to the administrative ruling, farm tanks under 1,100 gallons were exempt from the DATCP registration requirement (see Wis. Admin. Code s. 93.140(1)(a)1). (NOTE: At this time, only aboveground storage tanks over 5,000 gallons are required to be registered. This is the same for on or off farm aboveground storage tanks.)

Plan Review Exemption for Farm Tanks Under 1,100 Gal. Prior to the administrative ruling, no plan review was required for aboveground storage tanks on farms under 1,100 gallons. See Wis. Admin. Code s. ATCP 96.100(1)(b)9. (NOTE: At this time, plan review is required for any aboveground storage tanks on or off farm over 5,000 gallons.)



Professional Installation Required for All Tanks Over 110 Gal. In general, prior to the administrative ruling, all aboveground storage tanks over 110 gallons – regardless of use or location – were required to be installed by a professional installer. See *Wis. Admin. Code s. [ATCP 93](#)*. Under the code, farm tanks that have a capacity of less than 1,100 gallons shall be **installed** by a certified installer (see *ATCP [93.630\(3\)\(b\)](#)*). In addition, aboveground fuel storage tanks on farms that are OVER 1,100 gallons must also be **installed** by a certified installer **OR supervised** by a certified installer (see *ATCP [93.630\(4\)\(c\)2.](#)*) (NOTE: this requirement has also been affected by the administrative ruling. Currently, aboveground storage tanks, on or off farm, less than 5,000 gallons are no longer required to be installed by credentialed installers.)

AB 384 attempts to fix the effect of the 2019 administrative ruling but in its current form, it deletes all of the unique farm tank provisions in ATCP 93 and applies a 110-gallon regulatory threshold for ALL aboveground storage tanks. See *ATCP [93.140\(1\)\(a\)1.](#)*

Accordingly, the agricultural groups listed above oppose AB 384 because this legislation will greatly increase the regulation imposed on aboveground storage tanks on farms.

CONTACT: Jordan Lamb, DeWitt LLP – (608) 252-9358 or jkl@dewittllp.com

**CHIPPEWA FIRE DISTRICT
13140 30TH AVE
CHIPPEWA FALLS, WI. 54729**

Good morning Members of the Consumer Protection Committee:

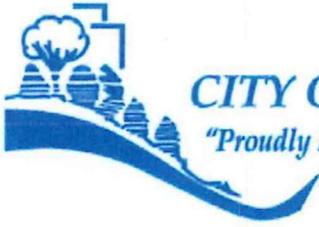
By the way of introduction, the Chippewa Fire District is a Local Program Operator for the Department of Agriculture, Trade and Consumer Protection (DATCP). A Local Program Operator (LPO) is a contracted agent and partner in the management and regulation for Above Ground and Underground Petroleum and Hazardous Material Storage Tanks. The Chippewa Fire District has been an LPO since the program's inception in 1992 under the Industry, Labor and Human Relations Department (ILHR) a time frame of almost 30 years.

The Chippewa Fire Districts provides Aboveground and underground tank services to one third of the Fire Departments in the State of Wisconsin (246 of 773); covers an area of 53,332 square miles and covers all or part of 28 of Wisconsin's 72 counties. The CFD was willing to work with DATCP for the contract year of July 1, 2020 to June 30, 2022 to see if the program and funding would stabilize with the return of the AST of 5,000 gallons or less to the program however state fiscal support is needed to continue to partner with DATCP. The Chippewa Fire District would like to point out the following issues:

- 1) The current rule creates hardship for local Fire Departments as they don't know that these tanks exist. Local fire departments have been removed from tank inspection since 1992. Many are neither trained nor certified to do this work. Also, the 2% Fire Dues does not fund such inspections. Local fire departments won't assume additional work without State fiscal support or proper training.
- 2) There is a concern for environmental damage and groundwater pollution as the tanks are no longer inspected or regulated. This has created environmental damage that won't be reported to DNR for assessment, clean-up, and monitoring. Firefighters are put at risk as these tanks are often installed improperly and firefighters are often unaware of their existence until an emergency occurs.
- 3) The three components of good code practices engineering, education, and enforcement. Without inspections, we cannot educate owners regarding their systems. Many times, owners are unaware of the environmental impact or fire safety hazards associated with smaller tanks. By adopting this bill, the conflicts that exist between Wisconsin State Statute 168.22 and DATCP 93 will be resolved. That resolution will protect Wisconsin's Environment and the health, safety, and welfare of both the citizens of the State of Wisconsin and Firefighters.
- 4) A customer purchasing a smaller AST from an uncertified vendor, who installs the tank incorrectly, may face financial exposure as their insurance company may refuse to pay for fire or environmental damage caused by an improper installation. Adopting this bill will ensure that all consumers of tanks less than 5,000 gallons will be protected.

Finally, when it became obvious that multiple issues and concerns had arisen, I asked the Staff to photograph and document instances where they have come across improperly installed AST's below the 5,000-gallon limit. I have included a document for you to review. As you can imagine the danger to the health, safety, welfare, and environment to the citizens and firefighters of Wisconsin increases daily if these tanks are not returned to the code. Your attention to this matter is greatly appreciated.

Scott Bernette Fire Chief
Chippewa Fire District 715-723-5488



CITY OF EAU CLAIRE
"Proudly Meeting the Needs of our Community"

FIRE AND RESCUE DEPARTMENT

Christian M. Bell, Chief

Emergency Calls	911
Administration	715/839-5012
Inspections/Investigation	715/839-4825
After Hours	715/839-5013
E-mail	ecfire@eauclairewi.gov
City Website	www.eauclairewi.gov

September 17, 2021

Representative Jesse James
Room 9, State Capitol
Madison, WI 53708

RE: AB- 384 – Regulation of above & below ground petroleum storage tanks

Dear Representative James,

I am writing to register my support for SB-381 pertaining to the regulation of above & below ground petroleum storage tanks.(AST/UST)

Currently, there are no regulations pertaining to tanks under 5000 gallons. No regulations in place outlining the safe installation and inspection of petroleum storage tanks creates a risk to public safety, the environment and increases the chances of possible ground water contamination.

For example, recently there was a release of diesel and other fuel in my area due to improper installation and operation of storage containers which leaked over time. These tanks were not subject to plan review nor an annual safety inspection. The soil in the area has been affected and the ground water has possibly been contaminated. It is my opinion this release was partly caused by no regulation and no safety inspections performed by trained inspectors.

As a tank inspector, it is my job to perform installation plan review and inspections to ensure the safety and integrity of petroleum tanks. Based on my experience and training I believe enacting this bill will continue to protect life, property and the environment as we have in the past.

If you have any questions or require any additional information, please contact me.

Jason Knecht

Fire Inspector
LPO Tank Inspector